

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

CHARLES KEITH WAMPLER,

Petitioner, : Case No. 3:22-cv-174

- vs -

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

WARDEN, London Correctional  
Institution

:  
Respondent.

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**REPORT AND RECOMMENDATIONS ON REQUEST FOR  
CORRECTION**

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This habeas corpus case is before the Court on Petitioner's Request for Correction of Decision and Entry (ECF No. 25). As a post-judgment motion, it requires a report and recommendations from the assigned Magistrate Judge.

Judgment was entered in this case on April 14, 2023 (ECF No. 15) and Petitioner appealed on April 25, 2023 (Notice of Appeal, ECF No. 16). Neither the Court's final Order (ECF No. 14) nor the Judgment contained a ruling on a certificate of appealability. That omission was called to the Court's attention telephonically by a clerk of the Sixth Circuit Court of Appeals<sup>1</sup>. As a result of that call, the Magistrate Judge filed a Report and Recommendations which recommended denial of a certificate of appealability (ECF No. 19). Wampler objected, Judge Rose recommitted the case, and the undersigned filed a Supplemental Report recommending the same outcome (ECF

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<sup>1</sup> Petitioner refers to this as a remand, but it was not.

Nos. 20, 21, 22). Petitioner again objected (ECF No. 23) and Judge Rose adopted the recommendation over objection that (ECF No. 24).

Petitioner correctly points out that the Magistrate Judge did not recommend dismissal with prejudice or a certificate to the circuit court that any appeal would be frivolous. However, the Decision and Entry does not require amendment because it did not purport to adopt any such recommendations. Instead, it adopted the Reports of June 7 and July 12, 2023, which recommended only that a certificate of appealability be denied. Thus the errors in reciting history in the Decision and Entry have no impact and do not warrant the effort to make the corrections Petitioner requests. *De minimis non curat lex*.

Although Common Pleas Judge Wiseman has re-sentenced Petitioner, it appears from the public docket that he has appealed from that judgment. The parties are directed to keep this Court advised of the progress of that case.

August 21, 2023.

#### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #

s/ *Michael R. Merz*  
United States Magistrate Judge